

**Letter of Findings Number: 04-20110052P
Use Tax – Negligence Penalty
For the Periods 2007-2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2007 and 2008. As a result of the Department's audit, the Department issued proposed assessments of use tax, interest, and penalties. The Department and Taxpayer resolved the use tax amount due; however, Taxpayer contested the penalty on the remaining balance.

In a March 16, 2011, e-mail, Taxpayer wrote "[w]e would prefer that a hearing officer review our request and do not feel a one-on-one hearing will be necessary, but I can be available by phone if needed." As a result of this correspondence, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on the use tax imposed as a result of the Department's audit.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states that it has a solid filing and tax reporting history and that it had merged with another company during the tax years. As a result of the merger, some necessary records were either unavailable or difficult to find. However, the assessment primarily related to materials purchased for materials incorporated into real estate and on which Taxpayer failed to remit sales tax at the time of purchase. Taxpayer has not provided sufficient factual or legal grounds to explain its failure to self-assess use tax on the remaining items; therefore, Taxpayer's penalty protest is denied.

FINDING

Taxpayer's protest is denied.

Posted: 06/29/2011 by Legislative Services Agency
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